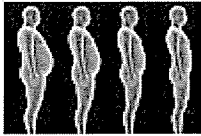


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Beware of dog liability laws

By **Benny L. Kass**, Published: October 12

Approximately 5 million Americans are bitten by dogs every year. In most states, if your dog bites someone, you are liable for any damage caused.

In a few states, including Maryland and Virginia, the so-called “one bite” rule is the law. That means that the person who was bitten must prove that the dog was dangerous or that the bite was due to the negligence of the dog’s owner.

In other words, if your dog had not bitten anyone in the past, it would be difficult to prove liability.

In Maryland, however, the one-bite rule was rejected for pit bulls. The Maryland Court of Appeals in April ruled that pit bulls are inherently dangerous, and a dog owner — and a landlord who allowed the dog to reside in a rented dwelling — could be held strictly liable.

Clifford — a pit bull — escaped twice from what the court called an “obviously inadequate small pen” and attacked at least two boys at different times on the same day. One of the boys underwent more than five hours of surgery to repair his femoral artery.

The trial court determined that the one-bite rule applied. However, the Court of Appeals reversed that ruling and established a strict liability standard in respect to the owning, harboring or control of pit bulls. According to the court, “It is not necessary that the landlord (or the pit bull’s owner) have actual

knowledge that the specific pit bull involved is dangerous.”

How does this affect condominiums and homeowner associations? Many associations prohibit any animal, so the court case is academic. However, the case is very important for associations that permit dogs. The court made it clear that any person who has the right to control the pit bull’s presence would be held liable for any such dog bite.

And community associations clearly “control” the dog’s presence. Most associations have rules regarding how dogs (and other animals) must be treated, including that dogs must be on a leash while on community property, the dog walker must pick up and dispose of any dog waste, and, in some associations, dogs must not disturb other owners or tenants.

The Maryland legislature attempted to modify or repeal the court opinion. However, in the special session this summer, the House and Senate deadlocked and no action was taken. Thus, the law stands: Pit bulls are inherently dangerous.

What should Maryland associations do? First, contact the master insurance carrier to determine if your insurance will cover the association if an owner’s or tenant’s pit bull bites someone.

Next, it should consider whether to adopt rules. Such rules could range from prohibiting pit bulls to requiring them to be muzzled when on common grounds. It should be noted that the Maryland Condominium Act requires that any proposed rule must first be provided to all owners, and an open meeting must be held to allow owners’ comments.

Should owners who currently have pit bulls be grandfathered? Clearly it would be unfair to those owners to suddenly be forced to remove their dog. One possible solution: require (by rule) that such owners indemnify and hold the association harmless should their dog bite and injure someone. The association should also insist that all dog owners provide proof that they have adequate insurance.

Next year, the Maryland legislature may resolve the matter. During the recent special session, the Senate judiciary committee, chaired by Sen. Brian E. Frosh (D-Montgomery), passed a measure that removed the one-bite rule. The bill — if enacted — would also have protected landlords (and presumably community associations) from liability. The House balked, however, and the court opinion was neither repealed nor modified.

This is a highly controversial issue. The American Society for the Prevention of Cruelty to Animals opposed the Maryland court decision. Even Gov. Martin O’Malley (D) recently commented that it was not the dog — but the dog’s owner — who determines the dog’s behavior.

Does this only affect Maryland associations? At present, yes. The laws in Virginia and the District — while accepting the one-bite rule — do not protect a dog owner who allows his dog to be off the premises without a leash. Such conduct would be considered negligent.

Furthermore, those laws do not distinguish between breeds. Indeed, the Fairfax County Web site specifically states that “no animal will be considered dangerous because of its breed.”

If a condominium owner’s dog bites and injures someone in the District or in Virginia, can the association be held liable? It depends on the facts. If the association has a rule requiring all dogs on common property to be leashed yet takes no action against a dog owner who consistently allows his pet

to run loose, the association could be held responsible for any injury.

All community associations must review their dog policies. Many associations have not updated their procedures for many years. Consider the recent Maryland court case to be a wake-up call.

Benny L. Kass is a Washington lawyer. This column is not legal advice and should not be acted upon without obtaining legal counsel. For a free copy of the booklet "A Guide to Settlement on Your New Home," send a self-addressed stamped envelope to Benny L. Kass, 1050 17th St. NW, Suite 1100, Washington, D.C. 20036.

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